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FOREIGN SERVICE DESPATCH

FROM : AMEMBASSY, Tokyo — DATE 96 3/19/82 — DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON — July 16, 1952 — DATE

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SUBJECT: Press Comments on Japanese Government Views concerning U.S.-Japan FCN Treaty.

Enclosed for the Department's information are summary translations of two articles appearing in the Nihon Keizai on July 6 and 9, 1952, concerning the views of the Ministry of Finance on the FCN Treaty presently under discussion between representatives of the Ministry of Foreign Affairs and the Embassy. There is also enclosed the text of an article on this subject carried in the issue of July 11 of the English-language Nippon Times.

All three articles report that the Ministry of Finance has now completed its study of the proposed FCN Treaty and has formulated the revisions or amendments it desires. According to these reports, the Ministry of Finance believes that current exchange-control restrictions imposed under the Foreign Exchange Control Law should not be eased, and that "the domestic law should take precedence over the contemplated treaty". The Ministry of Finance is also reported to "fear" that the national treatment standard stipulated in the FCN Treaty would not, in all cases, "mean the according of outright friendly conditions to our country" in view of the fact that discriminatory state laws in the United States sometimes take precedence over Federal laws. Therefore, the articles state, "it is deemed necessary either totally or partially to restrict activities on key industries, railways, public utilities and the like" in which American interests may wish to invest.

The Nihon Keizai article of July 6 further states that "the American side made a proposal to the Japanese Government that branches of American banks in this country be protected in the rights already acquired in the course of the Occupation, (but) it is nevertheless natural that they (i.e., these rights) should be relinquished". Finally, the Ministry of Finance will reportedly "seek the most-favored-nation treatment clause" with respect to customs tariffs, but agrees that "after Japan is admitted to GATT she will follow the tariff set by that organ".

As will be seen from the above excerpts, these articles contain a mass of misinformation and misrepresentation. The Embassy inquired informally of the Ministry of Foreign Affairs whether these news reports were based on official releases of the Ministry of Finance or otherwise represented the views held by that Ministry. The Embassy was informed by officials of the Ministry of Foreign Affairs that the enclosed news reports were merely the result of speculation on the part of uninformed reporters. The writer was further informed that officials of the Ministry of Finance at recent inter-agency meetings on this subject appear to have taken a less rigid view than formerly. The fact remains, however, that the Ministry of Finance still insists on modifying Article VII of the standard draft to restrict business and investment

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activity on the part of Americans. The Ministry is particularly opposed to any acquisition by Americans of shares in Japanese commercial banks, although these are freely offered for sale on the local stock market.

Representatives of the Ministry of Foreign Affairs appear to be apologetic concerning the delays encountered in arriving at a Japanese Government position on the treaty provisions. They report, however, that their conferences with the Ministry of Finance may be concluded within a few days, and that final recommendations on proposed changes may be drafted jointly by the two Ministries for submission to the Cabinet about July 15. In the event of Cabinet approval, it is believed that the final round of the informal discussions on the FCN Treaty (which were to have been held late in June) may begin about July 28.

For the Ambassador:

Frank A. Waring
Counselor of Embassy
for Economic Affairs

Enclosures:

1. Summary of article in Nihon Keizai July 6, 1952.
2. Summary of article in Nihon Keizai July 9, 1952.
3. Summary of article in Nippon Times July 11, 1952.

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NIHON KEIZAI (Summary of Article) July 6, 1952

Japanese Finance Ministry Makes Slight Amendment to American Draft on U.S.-Japan Treaty of Commerce and Navigation. Activities of Americans May Be More Strictly Restricted Than International Usage.

Our negotiations on the conclusion of a U.S.-Japan treaty of commerce and navigation are now entering the final stage. The Finance Ministry, at a ministerial meeting held Saturday, studied the plan prepared by American Government authorities. As a result, an influential view prevails in the said ministry that the scope of business activities and acquisition of assets by Americans in our country should be more strictly restricted than international usage. Thus it appears that Finance Ministry authorities will make slight amendments to the plan prepared by the U.S. Government along the above-mentioned lines.

The Finance Ministry is wrestling with the problem of how to adjust its policy of protecting domestic economy with the Government's measures of coordinating our economy with international economy and with the advocated introduction of foreign capital, since the term of the contemplated U.S.-Japan Treaty of Commerce and Navigation is due to expire after a lapse of ten years and moreover, since it is foreseen that the international economy will undergo considerable changes in the future. Anyhow, Finance Ministry authorities will draw a conclusion on the issue, including the customs problem, at a ministerial conference to be held on the 5th, and will submit their final view to the Foreign Affairs Ministry in the course of the present week.

Right to Restrict Acquisition of Real Estate Reserved: According to Finance Ministry authorities, the following points were examined at the ministerial meeting held on the 5th:

1. As a matter of general view, the Finance Ministry agrees to according national treatment to all Americans (including juridical persons or corporations). But in view of the fact that in the United States national laws are distinguished from laws enacted by the states and that there are instances in which the latter takes precedence over the former (national laws), it is feared that the conclusion of a U.S.-Japan treaty of commerce and navigation (national law) would not mean the according of outright friendly conditions to our country.

2. Accordingly in order to avert this type of disadvantage, it is necessary to consider imposing restrictions as equally as severe as those on economic activities regulated by some laws enacted by some states of that country.

3. Arrangements concerning the scope of enterprising activities to be recognized will constitute one of the knottiest issues in the course of our negotiations for the conclusion of a U.S.-Japan treaty of commerce and navigation. In this connection, it is deemed necessary either to totally or partially restrict activities of key industries, railways, public utilities, and the like.

4. In the field of acquisition of assets, the problem lies in real estate, which is now entirely free, and movable assets, including holding of stocks, restricted under the Foreign Investment Law. In the case of acquisition of real

estate, it is feared that the effective term of ten years as laid down under the draft law would be too long. Consequently, it would be advisable for the moment to accord full national treatment under the present conditions, so far as the matter of acquisition of assets is concerned. However, it will be necessary for the Japanese Government to reserve the right to impose restrictions on the acquisition of property in the future, after ascertaining the amount of acquisition and its future trend.

In the case of movable assets, it would be well to facilitate their acquisition by means of easing and simplifying necessary procedures under the present Foreign Investment Law, and at the same time, it would be advisable to leave its substantial easing (acquisition of movable assets) as a problem to be settled in the future. Incidentally, Finance Ministry authorities consider that all regulations provided for under the present Foreign Investment Law will not run counter to the spirit of friendship embodied in the draft treaty.

5. It is strongly desired that branches of both American and Japanese banks be established in each country on the basis of the reciprocity principle. On the other hand, although the American side made a proposal to the Japanese Government that branches of American banks in this country be protected in the rights already acquired in the course of the Occupation, it is nevertheless natural that they (rights) should be relinquished. All related regulations will be revised so that branches of American banks will operate their business under the ordinance concerning store administration issued by the Finance Ministry. Their businesses should also be rescrutinized.

6. Although quite a few American bankers are desirous of holding shares of Japanese commercial banks, yet the general tendency prevailing in our country is that they (Japanese commercial banks) do not welcome acquisition of their shares by foreign banks. And it may not be positively authorized. In this respect, some other measures will be taken by the Finance Ministry as a problem concerning application of the Foreign Investment Law.

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NIHON KEIZAI (Summary of Article) July 9, 1952

Final Views of Finance Ministry of U.S.-Japan Treaty of Commerce and Navigation. Customs Duties on Level of GATT.

The following is observed to be the substance of views on the contemplated U.S.-Japan Treaty of Commerce and Navigation held by Finance Ministry. The Finance Ministry will communicate its views to the Foreign Office on the 9th.

1. In view of the composition of our country's international balance, whether we can achieve economic independence depends entirely upon our exports to the United States of America. Since there remain many points that need revising in the aspect of customs duties, it is necessary for our Government to obtain the promise from the American side when concluding a treaty of commerce and navigation that the most-favored-nation treatment will be accorded on a reciprocal basis.

2. Inasmuch as our country's tariff at present is fixed near the level of GATT (General Agreement concerning Trade and Tariff), it is advisable to push the reciprocity principle on the level of that international agreement.

3. In case our participation in the agreement (GATT) materializes, it is conceivable that even the United States, which is deferring observation of the tariff rates fixed by GATT, may no longer be able to ignore the reciprocity principle in view of the fact it is the advocate of GATT. Consequently, we can expect that all such pending issues as import duties on tuna, etc. will be completely settled. But even in case our participation in GATT is not authorized, our Government should propose beforehand to the American Government that the tariff rate of that international agreement be applied mutatis mutandis.

4. It is hard to promptly settle problems involving exchange control. Hence, to conclude a U.S.-Japan treaty of commerce and navigation, our Government should not ease restrictions imposed under the present Foreign Exchange Control Law too liberally. Consequently, even if national treatment is accorded to Americans (corporations) in regard to their activities in the domestic market, it should be laid down explicity in the proposed U.S.-Japan Treaty of Commerce and Navigation that our Foreign Exchange Control Law will be applied to the disposition of profits and dividends pursuant to their national treatment. In this case, our Government should indicate that the domestic law should take precedence over the contemplated treaty.

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NIPPON TIMES

July 11,1952

Mutual Benefits Desired in Pact - Finance Ministry Reportedly Forms Views on U.S. Commerce Treaty

The U.S.-Japan Treaty of Commerce and Navigation should be based strictly on the mutual benefit principle and U.S. nationals in Japan should naturally be barred from operating public utilities enterprises such as railways, power and gas, the Finance Ministry reportedly holds.

The Ministry has formulated its views on the treaty, negotiations on which are slated to be resumed shortly. It is expected to convey these views to the Foreign Office in a few days.

According to quarters close to it, the Ministry intends to accord U.S. nationals in Japan the same treatment as the Japanese people in the widest possible scope, provided the U.S. will offer similar treatment to the Japanese in that country.

The Ministry is opposed to giving an entirely free hand to the activities in Japan of U.S. banks. The acquisition of mining rights by Americans in Japan is also opposed.

The Ministry is of the opinion that the present Foreign Investment Law concerning acquisition of properties by foreigners and the foreign exchange control system now in force should be respected by the projected treaty.

As for the tariff issue, the Finance Ministry will seek the most-favored-nation treatment clause. But after Japan is admitted to GATT (General Agreement on Tariff and Trade), she will follow the tariff set by that organ, it said.

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